

HOUSE BILL No. 5135

August 22, 2007, Introduced by Rep. Cushingberry and referred to the Committee on Tax Policy.

A bill to provide for the levy, assessment, and collection of an excise tax on certain services; to provide exemptions; to appropriate the proceeds; to prescribe certain powers and duties of certain state departments; and to prescribe penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "service providers excise tax act".

3 Sec. 3. As used in this act:

4 (a) "Affiliated group" means 2 or more United States
5 corporations, 1 of which owns or controls, directly or indirectly,
6 80% or more of the capital stock or other ownership interest with
7 voting rights of the other United States corporation or United
8 States corporations.

1 (b) "Controlled group" means a controlled group of
2 corporations as defined by section 1563 of the internal revenue
3 code, 26 USC 1563.

4 (c) "Department" means the department of treasury.

5 (d) "Employee" means an employee as defined in section 3401(c)
6 of the internal revenue code, 26 USC 3401, in effect on January 1,
7 2007. A requirement that an employer withhold taxes from a person
8 for federal income tax purposes is prima facie evidence that the
9 person is an employee.

10 (e) "Entities under common control" means entities described
11 in the United States department of treasury regulation 1.414(c)
12 relating to 2 or more trades or businesses qualifying for pension,
13 profit-sharing, and stock bonus plans.

14 (f) "Gross receipts" means the total amount of consideration,
15 including cash, credit, property, and services, for which services
16 are sold, valued in money, whether received in money or otherwise,
17 without any deduction for the service provider's cost of the
18 service sold, the cost of materials used or installed, labor or
19 service cost, interest, losses, costs of transportation to the
20 service provider, taxes imposed on the service provider other than
21 the tax imposed under this act, and any other expense of the
22 service provider. Gross receipts do not include the following:

23 (i) Discounts, including cash, term, or coupons that are not
24 reimbursed by a third party that are allowed by a service provider
25 and taken by a service provider on a sale of a service.

26 (ii) Interest, financing, and carrying charges from credit
27 extended on the sale of services, if the amount is separately

1 stated on the invoice, bill of sale, or similar document given to
2 the purchaser.

3 (iii) Any taxes legally imposed directly on the purchaser that
4 are separately stated on the invoice, bill of sale, or similar
5 document given to the purchaser.

6 (g) "Intermediary" means a person to whom a service is sold
7 who specifically charges a third person for that service and that
8 third person is the ultimate recipient of that service.

9 (h) "Parent cooperative preschool" means a nonprofit,
10 nondiscriminatory educational institution, maintained as a
11 community service and administered by parents of children currently
12 enrolled in the preschool, that provides an educational and
13 developmental program for children younger than compulsory school
14 age, that provides an educational program for parents, including
15 active participation with children in preschool activities, that is
16 directed by qualified preschool personnel, and that is licensed by
17 the department of labor and economic growth pursuant to 1973 PA
18 116, MCL 722.111 to 722.128.

19 (i) "Person" means an individual, firm, partnership, joint
20 venture, association, social club, fraternal organization,
21 municipal or private corporation whether or not organized for
22 profit, company, limited liability company, estate, trust,
23 receiver, trustee, syndicate, the United States, this state, any
24 political subdivision of this state, or any other group or
25 combination acting as a unit, unless the intention to give a more
26 limited meaning is indicated by the context.

27 (j) "Service" means an activity engaged in for another person

1 for a fee, retainer, commission, or other consideration, including
2 a professional service, which activity predominantly involves the
3 performance or delivery of a task or process as distinguished from
4 the transfer or production of tangible personal property. In
5 determining whether an activity is a service for purposes of this
6 act, the intended use, principal objective, or ultimate objective
7 of contracting parties is not controlling.

8 (k) "Service provider" means a person performing or delivering
9 a service. However, if the department determines that it is
10 necessary for the efficient administration of this act to regard a
11 person as an agent of a dealer, distributor, supervisor, employer,
12 or person under whom they operate or on behalf of whom they perform
13 or deliver a service, irrespective of whether that person is
14 performing or delivering a service on his or her own behalf or on
15 behalf of that dealer, distributor, supervisor, employer, or other
16 person, the department may regard that person as an agent and may
17 consider the dealer, distributor, supervisor, employer, or person
18 under whom they operate or on behalf of whom they perform or
19 deliver a service as performing or delivering a service for the
20 purposes of this act.

21 (l) "Taxpayer" means a person subject to the tax levied under
22 this act.

23 (m) "United States corporation" means a domestic corporation
24 as that term is defined in section 7701(a)(3) and (4) of the
25 internal revenue code, 26 USC 7701.

26 Sec. 5. (1) There is levied upon and there shall be collected
27 from every person performing or delivering a service in a

1 transaction, in which that service is received in this state by the
2 purchaser or the purchaser's designee, a specific tax on the gross
3 receipts from the provision of the service at a rate determined by
4 the legislature.

5 (2) The department may use the services, information, or
6 records of any other department or agency of state government in
7 the performance of its duties under this act, and other departments
8 or agencies of state government shall furnish those services,
9 information, or records upon the request of the department.

10 Sec. 7. Services subject to the tax levied under this act
11 include only those services specifically identified by the
12 legislature.

13 Sec. 9. Services sold to any of the following are exempt from
14 the tax levied under this act:

15 (a) A nonprofit school, nonprofit hospital, or nonprofit home
16 for the care and maintenance of children or aged persons operated
17 by an entity of government, a regularly organized church,
18 religious, or fraternal organization, a veterans' organization, or
19 a corporation incorporated under the laws of this state, if the
20 income or benefit from the operation does not inure, in whole or in
21 part, to an individual or private shareholder, directly or
22 indirectly, and if the activities of the entity or agency are
23 carried on exclusively for the benefit of the public at large and
24 are not limited to the advantage, interests, and benefits of its
25 members or any restricted group.

26 (b) A parent cooperative preschool.

27 (c) A regularly organized church or house of religious

1 worship, except when the service is used or consumed in an activity
2 that is mainly a commercial enterprise.

3 (d) Persons engaged in a business enterprise and using or
4 consuming the service in the tilling, planting, caring for, or
5 harvesting of the things of the soil; in the breeding, raising, or
6 caring for livestock, poultry, or horticultural products, including
7 transfers of livestock, poultry, or horticultural products for
8 further growth; or in the direct gathering of fish, by net, line,
9 or otherwise only by an owner-operator of the business enterprise,
10 but not a charter fishing business enterprise. A service is exempt
11 under this subdivision only to the extent that that service is used
12 for the exempt purpose stated.

13 (e) The holder of a water pollution control facility tax
14 exemption certificate issued under part 37 of the natural resources
15 and environmental protection act, 1994 PA 451, MCL 324.3701 to
16 324.3708, or an air pollution control facility tax exemption
17 certificate issued under part 59 of the natural resources and
18 environmental protection act, 1994 PA 451, MCL 324.5901 to
19 324.5908, if the service is used to install a facility as that term
20 is defined in section 3701 or 5901 of the natural resources and
21 environmental protection act, 1994 PA 451, MCL 324.3701 and
22 324.5901.

23 (f) The United States, its unincorporated agencies and
24 instrumentalities, any incorporated agency or instrumentality of
25 the United States wholly owned by the United States or by a
26 corporation wholly owned by the United States, the American Red
27 Cross and its chapters and branches, and this state or its

1 departments and institutions or any of its political subdivisions.

2 (g) An organization not operated for profit and exempt from
3 federal income tax under section 501(c)(3) or 501(c)(4) of the
4 internal revenue code, 26 USC 501, but only to the extent that the
5 service is used to carry out the purposes of the organization as
6 stated in the organization's bylaws or articles of incorporation or
7 organization. The exemption under this subdivision is limited to
8 the percentage of exempt use to total use determined by a
9 reasonable formula or method approved by the department.

10 (h) A manufacturer, for direct use by the manufacturer in
11 manufacturing. As used in this subdivision:

12 (i) "Manufacturer" means a person engaged in manufacturing.

13 (ii) "Manufacturing" means the activity of transforming,
14 altering, or modifying tangible personal property by changing the
15 form, composition, or character of the tangible personal property
16 for ultimate sale at retail.

17 (i) An extractor, for direct use by the extractor in an
18 extractive operation. As used in this section:

19 (i) "Extractive operation" means the taking or extracting from
20 land for resale ore, oil, gas, coal, timber, stone, gravel, clay,
21 minerals, or other natural resource material.

22 (ii) "Extractor" means a person engaged in an extractive
23 operation.

24 (j) The organizing entity of a qualified athletic event, if
25 that organizing entity is or would be exempt from the tax levied
26 under the general sales tax act, 1933 PA 167, MCL 205.1 to 205.78,
27 as provided in section 5b of the general sales tax act, 1933 PA

1 167, MCL 205.55b, but only for services included in corporate
2 sponsor contracts for the event.

3 (k) An intermediary.

4 (l) A member of an affiliated group, a controlled group, or
5 entities under common control, when sold to another member of the
6 same affiliated group, controlled group, or entities under common
7 control.

8 Sec. 11. For the purpose of proper administration of this act
9 and to prevent evasion of the tax levied under this act, evidence
10 that a service has been received in this state is prima facie
11 evidence that the service is subject to tax.

12 Sec. 13. (1) Except as otherwise provided in subsections (2)
13 and (4), every person performing or delivering a service subject to
14 the tax levied under this act, on or before the twentieth day of
15 each calendar month, shall file with the department a return for
16 the preceding calendar month, in a form prescribed by the
17 department, showing information the department considers necessary
18 for the proper administration of this act. At the same time, each
19 person shall pay to the department the amount of tax imposed by
20 this act with respect to the services covered by the return.

21 (2) If considered necessary to ensure payment of the tax
22 levied under this act or to provide a more efficient
23 administration, the department may require and prescribe the filing
24 of returns and payment of the tax for other than monthly periods.

25 (3) The tax levied under this act shall accrue to this state
26 on the last day of each calendar month.

27 (4) If a due date falls on a Saturday, Sunday, state holiday,

1 or legal banking holiday, the tax levied under this act is due on
2 the next succeeding business day.

3 Sec. 15. (1) For purposes of the tax levied under this act, a
4 taxpayer shall source a transaction for a service as follows:

5 (a) If the service is received by the purchaser or the
6 purchaser's designee at a business location of the service
7 provider, the transaction is sourced to that business location.

8 (b) If the service is not received by the purchaser or the
9 purchaser's designee at a business location of the service
10 provider, the transaction is sourced to the location where the
11 service is received by the purchaser or the purchaser's designee,
12 if known to the service provider.

13 (c) If a transaction for a service is not sourced under
14 subdivision (a) or (b), the transaction is sourced to the location
15 indicated by the purchaser's address available from the service
16 provider's business records maintained in the ordinary course of
17 the service provider's business, provided use of the address does
18 not constitute bad faith.

19 (d) If a transaction for a service is not sourced under
20 subdivision (a), (b), or (c), the transaction is sourced to the
21 location indicated by the purchaser's address obtained at the
22 completion of the transaction, including the address of the
23 purchaser's payment instrument if no other address is available,
24 provided use of the address does not constitute bad faith.

25 (e) If a transaction for a service is not sourced under
26 subdivision (a), (b), (c), or (d) or if the service provider has
27 insufficient information to source the transaction under

1 subdivision (a), (b), (c), or (d), the sale shall be sourced to the
2 location where the service provider performed the service.

3 (2) As used in this section, "receive" means making first use
4 of a service.

5 Sec. 17. (1) A person engaged in the business of performing or
6 delivering a service shall not advertise or hold out to the public
7 in any manner, directly or indirectly, that the tax levied under
8 this act is not considered an element in the price to the purchaser
9 of the service.

10 (2) A taxpayer may reimburse himself or herself by adding to
11 the price of a service any tax levied under this act. A taxpayer
12 shall separately state the tax levied under this act on any
13 invoice, bill of sale, or similar document given to the purchaser.
14 The taxpayer shall compute the tax to the third decimal place and
15 round up to a whole cent when the third decimal place is greater
16 than 4 or round down to a whole cent when the third decimal place
17 is 4 or less.

18 (3) Any tax collected by the taxpayer from the purchaser under
19 this act is for the benefit of this state and a person other than
20 this state shall not derive a benefit from the collection or
21 payment of the tax levied under this act.

22 Sec. 19. (1) This act shall be administered by the department
23 under 1941 PA 122, MCL 205.1 to 205.31, and this act. If the
24 provisions of 1941 PA 122, MCL 205.1 to 205.31, and this act
25 conflict, the provisions of this act shall apply.

26 (2) The department may promulgate rules to implement this act
27 under the administrative procedures act of 1969, 1969 PA 306, MCL

1 24.201 to 24.328.

2 Sec. 21. (1) If a taxpayer refunds or provides a credit for
3 all or a portion of an amount paid for a service the gross receipts
4 for which are subject to the tax levied under this act within the
5 time period stated in that taxpayer's refund policy or 180 days
6 after the initial billing for the service, whichever is sooner,
7 that taxpayer shall also refund or provide a credit for the tax
8 paid under this act on all or that portion of the amount paid for
9 services that is refunded or credited.

10 (2) A cause of action against a service provider for
11 collecting an amount greater than the tax levied under this act
12 does not accrue until 60 days after a purchaser has provided
13 written notice of that claim to that service provider. The
14 purchaser shall provide sufficient information to determine the
15 validity of the request in the notice provided to the service
16 provider.

17 Sec. 23. A taxpayer shall make a final return under this act
18 within 20 days after the date that taxpayer sells that taxpayer's
19 business or a stock of goods or quits the business.

20 Sec. 25. (1) A taxpayer shall keep accurate and complete daily
21 records of services provided, receipts, invoices, and all pertinent
22 documents in a form the department requires. These records shall be
23 retained for a period of 4 years after the tax levied under this
24 act to which the records apply is due or as otherwise provided by
25 law.

26 (2) A taxpayer who is also engaged in a business, occupation,
27 or profession not subject to the tax levied under this act shall

1 maintain books and records to show separately the transactions for
2 services used to determine the amount of the tax levied under this
3 act. If the taxpayer fails to maintain separate books and records
4 as required under this subsection, the tax under this act is levied
5 on the entire gross receipts of all the taxpayer's businesses. The
6 taxes levied under this act are a personal obligation of the
7 taxpayer.

8 (3) If the department considers it necessary, the department
9 may require a taxpayer, by notice served upon that taxpayer, to
10 make a return, render under oath certain statements, or maintain
11 certain records the department considers sufficient to show whether
12 or not that person is liable for the tax under this act.

13 (4) A purchaser may provide a blanket exemption certificate in
14 a form prescribed by the department that covers all exempt
15 transactions for services between a taxpayer and that purchaser for
16 not more than 4 years as stated on the blanket exemption
17 certificate, if that period is agreed to by the taxpayer and the
18 purchaser.

19 Sec. 27. (1) If a taxpayer claims an exemption from the tax
20 levied under this act, the taxpayer shall obtain information
21 identifying the purchaser and the basis for the claim of exemption
22 at the time the services are provided or at a later date.

23 (2) A taxpayer shall maintain a record of all exempt
24 transactions and shall provide that record to the department upon
25 request.

26 Sec. 29. The department shall deposit all money collected
27 under this act in the state treasury to the credit of the general

1 fund.

2 Sec. 31. This act takes effect October 1, 2007.